THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION Nos.14675 and 14680 of 2004

Dated:. 04.2007

W.P.No.14680 of 2004
Between
1.The Commandant, 1st Bn, APSP
AP Special Police, Yousufguda, Hyderabad
And others.

.....Petitioners

and

1.Bobba Bhupendranath and another.

…Respondents

W.P.No.14675 of 2004

Between
1.The Commandant, 1st Bn, APSP
AP Special Police, Yousufguda, Hyderabad
And others.

.....Petitioners

and
1.A.Raghava Reddy and others.

..Respondents

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION Nos.14675 and 14680 of 2004

COMMON ORDER: *(per Hon'ble Sri Justice B.Prakash Rao)*

The petitioners herein representing the Special Police and its Housing Corporation filed these writ petitions, seeking a writ of Certiorari, assailing the orders passed in I.A.No.99 in L.G.C.No.27 of 2003 and I.A.No.100 of 2004 in L.G.C.No.92 of 2003 dated 6-7-2004, by the Special Court, Hyderabad-A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Special Court').

The 1st respondent in both the writ petitions are the applicants who have filed L.G.C.No.27 of 2003 and

92 of 2003. Along with the said cases, they have also filed I.A.No.100 of 2004 and 99 of 2004 seeking to pass consent decree and judgment as per the admissions made by the parties and the Special Court while allowing the said applications, has also allowed the L.G.Cs. Having aggrieved by the same, the present writ petitions are preferred by the respondents.

The status of the parties will hereinafter be referred to as arrayed before the special Court.

Since the issue involved in both the writ petitions and the parties, except the applicant are one and the same, both the writ petitions are being disposed of by a common order.

Heard Sri D.Prakash Reddy, learned senior counsel appearing on behalf of the respondents, Sri B.Adinarayana Rao appearing on behalf of the applicants and the learned Government Pleader for Revenue.

The facts, in brief, in the applications filed before the Special Court by the applicants, who are claiming to

be the members of the 2nd respondent- Society, are that they were allotted plot No.303-P and 303-O admeasuring 3,333 square yards in Block No.1 in the approved lay out of the Society, in pursuance of the registered sale deeds dated 29.6.1994 and 30.7.1996 and ever since they have been in possession and enjoyment of the same. They obtained permission from the Municipal Corporation of Hyderabad for construction of a residential building vide permit No.480 of 1995 dated 24.11.1994. However, since there is no approach road on the northern side as shown in the plan annexed to the sale deeds because of the land gradient which is about 25' deep between Plot Nos.303-N and 303-O, they could not take up construction in pursuance of the said permission.

According to the applicants, as per the approved lay out of the Society, the northern boundary of Plot No.302-L, K,M,N,O, P and Q is plot Nos.293 to 298, however, on the ground and on actual measurement, there existed some extra land in between the said plots. On 25.05.2002, the applicants was informed

that the personnel belonging to the respondents encroached into his plot and Plot Nos.303-O and Q on 25.5.2002 and on visiting the site, he found that the respondents were undertaking construction for building a complex in the area covered by his plot and that in spite of showing the documents, they refused to stop the work. Then, the applicants had filed W.P.No.9833 and 9990 of 2002 and obtained interim stay as against the construction. Meanwhile, the first respondent raised a boundary dispute with the Society claiming that the land covered by Plot Nos.303-A to 303-Q belonged to them, but the same was denied by the Society. Then, at the instance of the Society, the Minister for Revenue directed the District Collector to conduct survey and demarcate the boundary between the lands of the 1st respondent and 2nd respondent-society. Accordingly, the District Collector, Hyderabad after conducting the survey, fixed the boundaries and communicated the same vide proceedings dated 24.3.1994 along with a sketch showing the boundaries between the lands held by them.

Further, it was stated that out of Ac.6.23 guntas of land held by the 1st respondent, Ac.3.20 guntas was allotted to Vijaya Co-operative Housing Society Limited by the Government and the possession was delivered in terms of the Panchanama dated 25.10.1994. Therefore, the 1st respondent was left with only Ac.3.03 guntas, wherein buildings have already been constructed. In the writ petition filed by the applicants, an Advocate-Commissioner was appointed to demarcate Plot Nos.303-O, P, and Q and also to verify whether the construction, which is being carried on by the respondents, is in their respective plots. Accordingly, the Deputy Director, Survey and Land Records, conducted survey and submitted his report to this Court along with the sketch. However, having regard to the disputed questions of fact, this Court disposed of the said Writ Petitions vide Ex.A5 directing the parties to agitate their claims before a competent civil Court and the same was confirmed in Writ Appeal being W.A.No.1644 of 2002, by

judgment, dated 22.10.2002. The applicant also filed a Special Leave Petition before the Apex Court and the same was rejected. Hence, the present application is filed by the applicants before the Special Court, alleging that the respondents are the Land Grabbers and seeking for handing over the possession of schedule land to them by evicting the respondents and also for compensation.

Before the Special Court, contesting the said applications, the respondents have filed counter-affidavit, admitting that there is no dispute over the ownership of Plot No.303-P and stated that the said plot is exactly behind plot No.294 as per the approved layout of the Society and there is no road between Plot Nos.303-P and 294. However, they denied that there is open land adjacent to Plot Nos.289 to 298, but claimed that there is open land adjacent to plot Nos.289, 290, 291 and 292, which were allotted to the 1st Battalion APSP, Hyderabad vide G.O.Ms.No.1989 Revenue, dated 11.10.1965 and since then they are in

possession. The respondents denied that they encroached the land belonging to the applicants or the Jubilee Hills Co-operative Housing Society. Therefore, it was the case of the respondents that the construction of the senior police officers' quarters was taken up in the land allotted to them. They admitted that in the writ petition filed by the applicants, as per the orders of this Court, a survey was conducted by the Deputy Director, Survey and Land Records and the same is in accordance with the provisions of law and the same is acceptable and is binding on both the parties. However, they disclaimed the survey of the year 1994 stating that it was done behind their back and stated that it was not a final one. Thus, the survey, which has been conducted by the Deputy Director as per the orders passed by this Court, is perfectly in accordance with the provisions of law and the report is binding on both the parties. The respondents also admitted allotment of the land to Vijaya Co-operative Housing Society Limited. Thus, even according to the respondents, there is no dispute or any serious

objection in the survey or the report submitted in pursuance of the orders of this Court. The only objection is with regard to the survey conducted in the year 1994. Therefore, they sought for dismissal of the application filed by the applicants on the ground that they are not the land grabbers.

During the pendency of the land grabbing cases, the applicants filed the present applications in I.A.No.99 and 100 of 2004 under Order 12 Rule 6 of C.P.C. contending that they relied on the survey conducted by the District Collector in the year 1994, but the respondents are relying upon the report dated 15.07.2002 of the Deputy Director, Survey and Land Records, Hyderabad, which was pursuant to the orders of this Court and under the circumstances, in order to avoid multiplicity of proceedings, they are willing to concur with the contesting respondents and accept the survey report dated 15.07.2002 issued by the Deputy Director, Survey and Land Records, Hyderabad. Therefore, they sought to allow the applications seeking

to pass a consent decree.

The respondents opposed the said applications contending that the applicants are seeking to accept the report dated 15.7.2002 only with a view to divert the attention of the Court on the main issue and therefore, the petitions are liable to be dismissed.

The Special Court after considering the submissions made by the learned counsel on either side and on perusal of the material placed before it, categorically found that having regard to the admitted facet of the report submitted by the Deputy Director pursuant to the orders of this Court, the admissions made by the respondents, are conclusive and the applications filed by the applicants have to be allowed and thereby, allowed the said petitions as well as the main land grabbing cases.

Sri D.Prakash Reddy, learned Senior Counsel appearing on behalf of the respondents by taking us through the entire record including the survey report, dated 15.6.2002, submitted that such report would not

in any way constitute any admission so that final orders could not be passed in exercise of powers under Order 12 Rule 6 of the CPC. Further, it is contended that as per the approved lay out of the Jubilee Hills Co-operative Housing Society, the southern boundary of the Plot Nos.303-L, K,M.N,O,P and Q should be Plot Nos.293 to 298, whereas the same is not the case as per the report of the Deputy Director. Therefore, without conducting a regular trial, in respect of the claims made on either side, the summary disposal of the case by the Special Court, merely basing on the said report of the Deputy Director dated 15.6.2002 is unsustainable and therefore, the matters require to be reconsidered by the Special Court after conducting regular trial.

On the other hand, Sri B.Adinarayana Rao, learned counsel appearing on behalf of the applicants contended that there being no such a serious dispute or objection as regards the said report dated 15.6.2002 of the Deputy Director, where it has been pointed out

that the respondents encroached in respect of the land belonging to the applicants, nothing more is left to be interfered into, and therefore, the findings arrived at by the Special Court, on facts, accepting the report, are binding in nature on the respondents. Hence, no interference is called for by this Court under Article 226 of the Constitution of India.

With these submissions made on either side, the only point that arises for consideration in these writ petitions is as to whether the Special Court was right in disposing of the cases on the alleged admissions made by the respondents in respect of the report of the Deputy Director, dated 15.6.2002?

As already submitted above, there is no much serious dispute in regard to the chequered events, which led to the filing of the above applications before the Special Court by the applicants, claiming that the respondents are the land grabbers.

The applicants claim that they are allottees of Plot No.303-P and 303-O of the Society, having

purchased under a registered sale deeds dated 29.06.1994 and 31.7.1996. It is also not in dispute that the 1st respondent was allotted an extent of Ac.6.23 guntas of land in Sy.No.403 of Shaikpet Village by the Government vide G.O.Ms.No.1989 Revenue, dated 11.12.1965. Out of the said land, an extent of Ac.3.20 guntas was re-allotted by the Government to Vijaya Cooperative Housing Society Limited. Therefore, ultimately the 1st respondent is left with only an extent of A.3.03 guntas in Sy.No.403 of Shaikpet Village. There is also no dispute as to the directions given by the Minister for Revenue, the District Collector, Hyderabad, who conducted the survey of the area for fixing the boundary between the land of the 1st respondent and the Society. There is also no dispute with regard to the fact that the applicants have has earlier filed WP Nos.9833 and 9990 of 2002 against the respondents, wherein this Court has appointed an Advocate-Commissioner so as to make a local inspection and submit a report to that effect while

directing the District Collector, Hyderabad to depute the Deputy Director, Survey and Land Records, Hyderabad. Pursuant to the same, the Deputy Director, Survey and Land Records, Hyderabad has conducted survey in accordance with law and submitted the report dated 15.6.2002. There is no dispute with regard to the fact that the said survey was conducted in the presence of both the parties, the Mandal Revenue Officer and others. Subsequent to the submission of the said report, where it has been categorically shown that the respondents have grabbed the land belonging to the applicants, there has been no change and in fact, it is the case on either side to accept the said report. Thus admittedly the report, which is unasserted, clearly goes to show that the respondents grabbed the land of the applicants. Therefore, on this report and on the consequent admissions of the respondents in the applications filed order XII Rule 6 of the CPC , the Special Court disposed of the main case it self with a categorical finding that either way there is no proper challenge to the said report, which was categorically

admitted. Therefore, the said report is conclusive and binding on both the parties.

The respondents who are in occupation of more area and who admitted the ownership of the applicants over the schedule plots as stated above as well as the report of the Deputy Director of Survey, which is binding on either side, can not give a go bye to their admissions in their counter.

At this juncture, it is relevant to take note of the principles laid down by the Apex Court in ***Nagindas Ramdas Vs. Dalpatram Iccharam Alias Brijram and others***[1]

> *Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions, which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.*

It is also held by the Apex Court in a judgment

reported in **UTTAM SINGH DUGGAL AND CO. LTD. V. UNITED BANK OF INDIA AND OTHERS** ([2]) as under:

> *As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. Under the Objects and reasons set out while amending the said Rule, it is sated that 'Where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim . The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled to'. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admissions to succeed.*

In view of the principles laid down by the Apex Court and the provisions of the Evidence Act and in the present facts and circumstances of the case, We have no hesitation to hold that the Court has got ample powers to pass final orders in consonance with the

admissions made by the parties and therefore, the Special Court is justified in allowing the applications as well as the L.G.Cs. against the respondents holding that the applicants are entitled to recovery of the schedule plots as mentioned therein.

In this view of the matter, the order impugned in both the writ petitions does not suffer from any infirmity or perversity warranting any interference by this Court under Article 226 of the Constitution of India. Accordingly, we see no merits in both the writ petitions and as such, the same are liable to be dismissed.

In the result, both the writ petitions are dismissed.

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(B.PRAKASH RAO, J)

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(M.VENKATESWARA REDDY, J)

17 -04-2007

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Note:

Having heard the learned counsel on both sides and since it is represented on behalf of the petitioners that the appeals

will be

filed to the Supreme Court, the parties shall maintain status quo

for a period of from weeks from today.

17-04-2007

Furnish CC by tomorrow.

(B.O) Skm

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[1] AIR 1974 SUPREME COURT 471

[2] 2000 (7) SCC 120.